

REPORTS OF COMMITTEES

OF THE

CHURCH SOCIETIES

OF THE

Dioceses of Toronto and Huron:

READ AT THE MEETING OF THE CHURCH SOCIETY
AT TORONTO,

ON THURSDAY, THE 10TH MARCH, 1859,

AND ORDERED TO BE PRINTED.

TORONTO:

ROWSSELL AND ELLIS, PRINTERS, KING STREET EAST.

1859

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REPORT OF THE COMMITTEE OF THE CHURCH SOCIETY OF THE
DIOCESE OF TORONTO.

The Committee appointed to confer with a Committee appointed by the Church Society of the Diocese of Huron, on the subject of the appropriation of a part of the lands and funds of your Society to that Society, beg leave to report. That they have had two meetings with the Committee from the Diocese of Huron, and have submitted to them their views on the subject on which they met to confer, under the four heads—Lands, Commutation Fund, Widows and Orphans' Fund, and all other funds, as follows :

No agreement on the subject of the appropriation has been made between the Committees, but your Committee have deemed it advisable to report the view they entertain, to the Society, for its approval and confirmation—if concurred in; with the exception of lands held on special trusts, **Lands.** all the lands held by the Society to be divided into four parts; one-fourth to be given to Huron, and to comprise all the lands within the limits of Huron, if not in excess of one-fourth.

Both principal and surplus income to be divided **Commutation** in the proportion which the sums paid by the **Fund.** Clergymen within the limits of each Diocese, at the time of Commutation, bear to the whole; no division of the principal to be made until the last life falls in, without the consent of all the Clergy who contributed to the fund.

To be settled, when the present pensions fall **Widows and Or-** in, on the basis of the value of the risks at the **phans' Fund.** present time on the lives of the Clergy and their

wives, within the limits of each Diocese. The income of the present Pensioners to be reduced if necessary, so as to make all payments to Widows equal. The present investment to be kept separate, and a new fund commenced.

All other Funds To be divided according to the scale of division on the separation of Montreal and Quebec.

REPORT OF THE COMMITTEE OF THE CHURCH SOCIETY OF THE
DIOCESE OF HURON.

Lands.

We do not consider any trusts which had reference in their administration to the whole Province of Upper Canada, as then forming the Diocese of Toronto, can now be termed "Special Trusts," and as such retained and administered by the Church Society of the Diocese of Toronto.

The Lord Bishop of Toronto having stated in his letter to the "Society for Promoting Christian Knowledge," in the year 1857, that the division which he had made of the Diocese of Toronto *into three*, was wonderfully equal, and having proposed, in the same letter, that the undefined territory to the north of Lake Huron should be administered by the Bishops of Huron and Toronto conjointly, until at some future day another Diocese should be formed in that territory; we are of opinion that the lands now held in trust by the Church Society of the Diocese of Toronto, should be divided into three parts, one to belong to the Diocese of Huron, and the remaining two to the Diocese of Toronto as at present constituted.

Commutation
Fund.

We cannot understand, why this fund should be divided on a basis different from that adopted in the division of the land, held in trust for the late Diocese of Toronto. This fund belonged to the entire Diocese as much as the land held in trust by the Church Society, and the Church Society of the Diocese of Toronto is as much trustee for the Diocese of Huron as for that of Toronto.

When the Bishop of Toronto addressed the Clergy on the subject of the commutation, he stated, that the fund arising from it should be

held sacred for ever as a Missionary Fund, for the benefit of the entire Province then the Diocese of Toronto.

When the indenture adopted by the Church Society of Toronto was objected to, because no provision seemed to be made in it for the division of the fund whenever the Diocese should be divided.

The Lord Bishop of Toronto stated, that it was the intention of the instrument to provide for such division whenever it became necessary. This is proved by the document, bearing the signatures of Rural Deans Cronyn, Blake, and Palmer, also by the opinion of the Honorable J. H. Cameron, furnished in writing to the Bishop of Toronto, and by his Lordship sent to Rural Dean Cronyn, in order that he might use it in endeavouring to induce the Clergy of his Deanery to consent to the commutation.

That it was with this understanding the Clergy signed the instrument, and had not this assurance been given upon the faith of the Bishop, and of the Honourable J. H. Cameron, many of the Clergy would never have consented to the arrangement.

With this fact before us, we think that the Commutation Fund can only be regarded as the property of the entire Diocese of Toronto, as formerly constituted, and not of any particular section of it. Were the principle proposed by the Church Society of the Diocese of Toronto fully carried out, and were it so divided, then the Commutation Fund would belong to the section of the Diocese in which the Clergy commuting resided, and should be appropriated to those places and to those only where each individual Clergyman resided when he commuted, which was never contemplated.

We understand the spirit of the commutation to have been the establishment of a permanent fund, applicable to the whole Province, and therefore divisible on the formation of any new Diocese.

We are therefore of opinion, that one-third of

the Commutation fund, as of the land, equitably belongs to the Diocese of Huron.

**Widows and
Orphans.**

The division of this fund, and of the lands given for it, will of necessity be a work of careful calculation, but it appears to us, that if a present division could be made it would not at all affect the security of the Pensioners upon the fund.

The Church Society of the Diocese of Toronto administers the trust, but as the Church Society of the Diocese of Huron is empowered by their act to release the Church Society of Toronto from any trusts transferred to the Diocese of Huron, it might be more satisfactory to both, that some plan for the immediate division of the fund should be adopted.

Suppose that the fund is not divided, in what way are the Widows of Clergymen in any new Diocese to be provided for, since they must be excluded from the Diocese of Toronto by the division of the Diocese?

All other Funds.

We cannot see why the scale of division, different from those proposed for the other properties held by the Church Society of Toronto, should be adopted for those funds, when the Diocese of Quebec was divided it was into two equal parts, and the scale adopted divided the property as nearly equal as possible. The contrary would be the case were the same scale adopted by the Dioceses of Huron and Toronto, therefore we conclude that the same scale should be adopted as in other cases, and one-third of "all other funds" be made over to the Diocese of Huron.

We have given the proposition of the Church Society of Toronto our most serious attention, and we fail to see any general principle in the proposed division. In the division of lands, it is assumed that the Diocese of Huron is entitled to one-fourth, thus assuming the unsettled territory as one Diocese.

In the division of the Widows and Orphans' Fund, the basis of division is the present risks in each locality.

In the division of "all other funds," the basis adopted is the scale of division on the separation of Quebec and Montreal. As this turned out in

fact, the division was nearly equal, but if this scale were applied to the Diocese of Huron, it would get little or nothing.

In the division of the Commutation Fund, it is proposed, that each Diocese should receive in proportion to the number of Clergymen Commuting within the limits of each Diocese.

In settling the division of the lands, a fourth is proposed to the Diocese of Huron, in order that the new Diocese yet to be formed in the undefined territory north of Lake Huron should have a share, but the interests of that anticipated Diocese are entirely overlooked in the plan proposed for the division of Commutation and other funds.

In the event of the joint Committee not being able to agree in any report, the Committee on the part of the Diocese of Huron are prepared to recommend, that all the above matters be submitted to the determination of the Lord Bishop of Montreal, or to two disinterested arbitrators, one to be appointed by the Church Society of each Diocese, with power to appoint a third party, the decision of the Bishop of Montreal, or of all or any two of such arbitrators to be final.

L. LAWRASON,
J. W. WILSON,
SECKER BROUGH.

SECOND REPORT OF THE COMMITTEE OF THE CHURCH SOCIETY
OF THE DIOCESE OF TORONTO.

We have bestowed our best consideration upon the arguments and reasonings contained in the memorandum submitted to us, and desire to offer in reply the following observations :

We understand the first paragraph to assert that one object of our proposal is to convert "General" into "Special Trusts," to be retained and administered as such by the Church Society of the Diocese of Toronto, for its exclusive benefit. We cannot too strongly repudiate the as-

sumption, that we had any such object or intention in view. We were and are decidedly of opinion, that the discretionary powers of the Church Society of the Diocese of Toronto over its general trusts remain unabridged and wholly unimpaired by the recent legislation; and impressed with this conviction, approached the consideration of the subject in an amicable and conciliatory spirit, sincerely desirous to recommend the adoption of such a scale of division, as would secure to the Diocese of Huron the greatest possible advantages, compatible with the obligations which the Church Society of the Diocese of Toronto owes to its own immediate Diocese.

We understand the memorandum to assert in the second place, that the lands held in trust by the Church Society of Toronto should be divided into three equal parts, whereof one should be allotted to Huron, because the Lord Bishop of Toronto, as is alleged, divided the old Diocese of Toronto into three parts as nearly equal as possible, leaving a surplus territory, termed "the undefined territory to the north of lake Huron, to be administered conjointly by the Bishops of Toronto and Huron, until, at some future day, another Diocese should be formed in that territory.

We are of opinion that the memorandum has here overlooked a most material fact, viz., that the Legislature of this Province has assigned to the Church Society of Toronto as its limits, the whole of Upper Canada, and as no act or representation of the Bishop of Toronto, nor even of the Queen herself, without the consent of Parliament, could curtail limits so established, it follows, that after deducting the Diocese of Huron, the remainder of Upper Canada is distinctly within the limits of the charter of the Church Society of Toronto. This being the case, we are of opinion that the fourfold division proposed by us is obviously equitable, inasmuch as there can be no doubt but that three-fourths of Upper Canada constitute the peculiar charge of the Toronto Society.

But laying the question of territorial limits entirely out of view, there are, in our opinion, other weighty considerations, which in an equitable scheme of partition, must be taken into account, and which fully justify, and as we think, more than justify, the equity and liberality, as respects the Diocese of Huron, of the proposed fourfold division.

1st. The bulk of the land has been granted by residents in the Diocese of Toronto as at present constituted, and vested in trust by them in the Church Society of the Diocese of Toronto. either under special trusts, or subject to such by-laws, rules and regulations, as may from time to time be passed by the said Corporation.

2nd. The necessities of the Diocese of Toronto are, as admitted by the Lord Bishop of Huron himself, at least equal to those of Huron; and since the profits that are now or may hereafter be derived from the land, would not suffice to meet the necessities of even one of the Dioceses, it becomes a grave matter for consideration, how far the Church Society of Toronto is justified in resigning any part of the property granted by residents in the Diocese of Toronto, while any of the necessities, it is more immediately bound to provide for, remain unsatisfied.

3rd. Although were the Diocese of Huron embraced as formerly within the limits of the Church Society of Toronto, the lands might, in the discretion of that Society, be in part applied to meet the exigencies of the Diocese of Huron, yet such disposition of them would, in that case, react beneficially upon the resources of the Church Society of Toronto, and enable it to provide for religious destitution in districts outside the Diocese of Huron; but this mutual co-operation has been put a stop to, by the act of the Diocese of Huron in demanding the incorporation of a separate Church Society for itself, and all that the Church Society of Toronto may now concede to Huron becomes a dead loss in regard to the Toronto Society's ability to meet by a judicious management of that portion so appropriated, its own more immediate exigencies.

We are sincerely convinced that these considerations alone, when dispassionately weighed, will be found amply sufficient to vindicate the equity and liberality, yea, even generosity, as respects the Huron Diocese, of the fourfold division we propose.

We are further of opinion that the memorandum is in error, in assuming that the proposed division of the land into four parts was based by us, upon the sole consideration that Upper Canada would eventually be divided into four Dioceses. If that idea was at any time introduced into the discussion, it arose from the Lord Bishop of Huron, having himself insisted upon a territorial basis applicable to only a part of Upper Canada. That it did not originate with the Toronto Committee is evident from the fact, that the Church Society of Toronto advisedly rejected it from the first, which it obviously did in declining to accede to the proposal of the Huron Society to elect upon the Committee persons to represent the interests of territorial sections of its field of action, as distinct from the whole.

The memorandum next proceeds to treat of the Commutation Fund. It expresses a difficulty in understanding why this fund should be divided on a basis different from that adopted in the division of the land, &c., &c.; and in contravention of the proposed basis of division, urges

1st. That this fund belonged to the entire Diocese as much as the land held in trust by the Church Society of Toronto.

2nd. That the Church Society of Toronto is as much trustee for the Diocese of Huron, as for that of Toronto.

On this branch of the subject, we desire to observe:—1st. That the Committee is expressly precluded by the terms of the reference, from taking the subject of the division of the capital of the Commutation Fund into consideration. Its enquiries in relation to that fund are strictly confined to the consideration of the best basis to be adopted for the division, between the Dioceses, of whatever surplus income may accrue from year to year. In order, however, to arrive at

any fair and intelligible decision on that point, it became necessary to contemplate the division of the capital fund at some future time, and to lay down a basis for that division. The memorandum expresses a difficulty in understanding why the proposed basis should be different from that adopted in the division of the land. We beg to state in explanation, that though the basis proposed, from the nature, origin and present position of the fund, is expressed in different terms from that applied to the other funds, and though the reasons upon which it rests are essentially different, yet the result will be found very little so, for the capital fund divided by four will give a result very little different from the amount actually contributed by the clergy resident in the Diocese of Huron.

2nd. We are of opinion that the assertion of the memorandum, viz., "That the Church Society of the Diocese of Toronto is as much a trustee for the Diocese of Huron as for that of Toronto," raises a legal question, which, however it may be decided, cannot possibly, as we think, affect the point under consideration.

The memorandum next alleges that the Bishop of Toronto stated that the fund arising from the Commutation should be held sacred for ever, as a Missionary Fund, for the benefit of the entire Province, then the Diocese of Toronto.

We are of opinion that the relations of the Church Society of Toronto, with reference to the Commutation Fund, having been formally arranged and defined by resolution after due notice, in accordance with the by-laws, the nature of the arrangement must be deduced from the rules and regulations then adopted, and not from any representations made by the Bishop personally. Without reference to any documents bearing his Lordship's signature, the Lord Bishop of Toronto will no doubt be ready and able amply to justify to any persons who may feel aggrieved, any representations he may have made. But the indentures and the by-law providing for the appropriation of any surplus that might accrue, are, we conceive, the documents material

to the decision of the case. It is plain on the face of the indentures, that upon the decease of the annuitants, the Commutation Fund, or rather that portion of it that shall then remain unexpended, shall be held in trust by the Church Society of the Diocese of Toronto, "upon such trusts for the support and maintenance of the clergy of the said Church within the said Diocese, or such other Dioceses as the said Diocese shall hereafter be divided into, and in such manner as shall from time to time be declared by any by-law or by-laws of the said Church Society, to be from time to time passed for that purpose." And the by-law that was adopted simultaneously with the form of indenture, provides that any surplus that may from time to time arise, shall be at the disposal of the Bishop of Toronto, for the support and maintenance of the clergy of the Diocese of Toronto as then constituted, at his own discretion, with the sole proviso that no single appropriation shall exceed £100 in amount. We are of opinion that, upon the foregoing statement of facts, the nature of the arrangement must be held to be essentially different from what we understand to be implied in the memorandum, viz., that it was intended that the fund should be equally spread over the whole Province upon the basis of a territorial division.

We understand the four following paragraphs of the memorandum as adducing facts and arguments to prove the spirit of the Commutation to have been the establishment of a permanent fund, applicable to the whole Province, and "therefore divisible on the formation of any new Diocese."

We deem it unnecessary for us here to enter into such discussion, inasmuch as the subject of the division of the capital of the Commutation Fund is expressly excepted from the reference to us, and the Committee have therefore nothing to do with it.

Widows and Orphans' Fund. The memorandum expresses the opinion that it might be more satisfactory to both Dioceses, that some plan for the immediate division of this fund should be adopted.

We would observe that our proposal is in accordance with the basis suggested by the Bishop of Huron, viz., a calculation of risks; but the treatment of this fund may, we conceive, be properly the subject of further discussion, if it is so desired.

Lastly, the memorandum refers to all the other funds *en bloc*, and intimates the opinion that the same scale of division should be applied to them, as in the case of the other properties.

We understand that there are no other funds that shew a balance to their credit, except in the case of the Missionary Fund: while the General Purpose Fund exhibits a large deficit, which must be provided for, and we are of opinion that the Church Society of Huron should bear its fair share of the burden. Any accumulations to the credit of the Mission Fund have, we understand, arisen from the donations and subscriptions contributed for the most part by donors now or formerly residents within the limits of the present Diocese of Toronto. It has not been the practice of the Society for some years back to invest to the credit of this fund; and considering that some of the capital that had accrued to the credit of this fund, and the larger proportion of the amount annually contributed, have year by year been disbursed for the benefit of missions in Huron; we are of opinion that the proposed basis for the division of this fund is perfectly equitable.

Should the foregoing explanations of the grounds upon which the scheme of division proposed by us is justified, not prove satisfactory to the Huron Committee, we are of opinion that the only remaining alternative is for us to abide strictly by the principles of the scheme adopted by the Church Societies of the Dioceses of Quebec and Montreal, in the division of their property; which will render the proposed reference to the Bishop of Montreal superfluous. The principle of the scheme adopted by the Church Societies of the Dioceses of Quebec and Montreal is in fact the principle of the scheme proposed by us; nor have we deviated from it unless at the instance of the Bishop of Huron in the matter of

the Widows and Orphans' Fund, and in the matter of the land at our own desire, to concede to the Diocese of Huron all that the utmost liberality, consistent with our other responsibilities, would warrant.

J. W. GAMBLE,
D. E. BLAKE,
J. HILLYARD CAMERON.

The Rev. D. E. BLAKE moved, seconded by the Rev. Dr. McMURRAY,—That further action upon the Reports of the Committee on Division of Property, be postponed till the Tuesday before the Annual Meeting in June, and that the documents be all printed and circulated among the incorporated members of both Societies.—*Carried.*

The Rev. S. B. ARDAGH gave notice that he would, in June, move the following Resolution :—Whereas, the Committee appointed to consider and report upon the division of the property held in trust by the Church Society of Toronto have not agreed in their Reports, it be now *Resolved*, that the Bishops of the two Dioceses respectively be empowered each to appoint an arbitrator to settle all questions of property between the two Dioceses; that the arbitrators so appointed shall have power to call in an umpire, and that the decision of such arbitrators, or any two of them, shall be considered final and binding on both Societies.

The Rev. A. TOWNLEY gave notice that he would move that the decision of this matter be left to an equal number of the incorporated members of the Church Societies of Toronto and Huron, to meet in June next, and that the decision of the majority be final; such members to be appointed by their respective Bishops.

